In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.17426 of 2001.

Date of decision:24.1.2007.

Kanwal Nain Singh.

...Petitioner.

Versus

State Bank of Patiala and others.

...Respondents.

...

Coram: Hon'ble Mr. Justice S .N. Aggarwal.

...

Present: Mr.S.C.Sibal, Senior Advoate with Mr. V. S. Rana Advocate for the petitioner.

Mr.H.N.Mehtani Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

Kanwal Nain Singh petitioner joined State Bank of Patiala (respondent No.1) on 29.12.1977 as Cashier-cum-Godown Keeper. He was continuing in the said service on 20.1.2001, when the respondent-Bank circulated a scheme called State Bank of Patiala Voluntary Retirement Scheme (in short SBPVR Scheme). Under this scheme (Annexure P-1), permanent full time employees of the Bank were eligible to seek voluntary retirement and the applications for that purpose could be filed from 15.2.2001 to 1.3.2001. The petitioner submitted application for voluntary retirement under SBPVR Scheme on 1.3.2001. However, on 2.3.2001, he

applied for withdrawal of that application seeking voluntary retirement under the said scheme. The application of the petitioner seeking voluntary retirement under SBPVR Scheme was accepted by the respondent-Bank vide letter dated 19.3.2001 and the petitioner was ordered to be relieved with effect from 31.3.2001.

In the meantime, the petitioner filed Civil Writ Petition No.4881 of 2001 challenging order dated 19.3.2001 passed by the respondent-Bank. This Court vide order dated 30.3.2001 passed in Civil Writ Petition No.4881 of 2001 directed that if the petitioner has not already been relieved, he would be allowed to continue in service till further orders. Ultimately, Civil Writ Petition No.4881 of 2001 was accepted by this Court vide order dated 3.4.2002 and the SBPVR scheme was held to be ultra vires.

The respondent-Bank filed petition for Special Leave to Appeal in the Hon'ble Supreme Court which was disposed of by the Hon'ble Supreme Court on 17.12.2002 along with a number of other similar cases. This case is reported as **Bank of India and others Vs.O.P.Swarnakar** (2003) 2 SCC 721.. Thereafter, review application and other applications were filed by the respondent-Bank in the Hon'ble Supreme Court for clarification or modification of the order dated 17.12.2002. The Hon'ble Supreme Court was pleased to pass the order dated 21.111.2004 (Annexure P7/1) in Review Petition (Civil) No.53 of 2003 in Civil Appeal 896 of 2002.

Since the petitioner was in service, he was promoted as an officer vide order dated 21.4.2003 with effect from 1.5.2003. However, the respondent-Bank passed order on 26.2.2004 by which the application of the

petitioner dated 1.3.2001 seeking voluntary retirement under the SBPVR Scheme was accepted and the petitioner was ordered to be relieved with effect from 29.2.2004 (Annexure P-8). The said order was challenged by the petitioner by filing the present writ petition.

The submission of learned counsel for the petitioner was that the application for retirement was submitted by him on 1.3.2001. He had withdrawn this application on 2.3.2001 before it was accepted on 19.3.2001. Therefore, withdrawal of this application could not have been denied to the petitioner because it was withdrawn before its acceptance. It was also submitted that the petitioner had not withdrawn any benefit of retirement when he had withdrawn his application on 2.3.2001. Reference was made to the judgment of the Hon'ble Supreme Court reported as **O.P.Swarnakar's** case (supra) in which the Hon'ble Supreme Court was pleased to lay down the law in para No.130 of the judgment as under:-

> "130. For the reasons aforementioned,we direct that:
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> 1. The appeals preferred by the nationalised banks arising from the High Courts are dismissed except the cases where the employees concerned have accepted a part of the benefit under the Scheme. However,in respect of such of the employees who despite acceptance of a part of the retirement benefit under the Scheme and continued under the orders of the High Court and has retired on attaining the age of superannuating, this order shall not apply.
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> 2. The appeals filed by the State Bank of India are allowed.
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> 3. The appeals arising from the judgments of the

Uttaranchal High Court are allowed and the judgments of the said High Court are set aside.

4. The appeals arising from the judgments of the Punjab and Haryana High Court in relation to ten writ petitions which were filed by the employees for a direction upon the Bank that the benefits under the Scheme be paid to them are set aside and the matters are remitted to the High Court for consideration thereof afresh on merits and in accordance with law."

It was submitted that since the petitioner has not withdrawn any benefit of retirement under SBPVR Scheme, therefore, the petitioner was entitled to withdraw application seeking voluntary retirement before its acceptance.

On the other hand, the submission of the learned counsel for the respondent-Bank was that in **O.P.Swarnakar's** case (supra), the writ petitions filed by the State Bank of India were accepted by the Hon'ble Supreme Court while the appeals filed by the nationalised banks were dismissed. This judgment was silent about the appeals filed by the respondent-Bank i.e. State Bank of Patiala which is a subsidiary of the State Bank of India.For that reason, the respondent Bank had filed the applications for review/clarification/modification of the order passed in **O.P.Swarnakar's** case (supra). The Hon'ble Supreme Court vide order dated 21.1.2004 passed orders on the application filed by the respondent-Bank for review/clarification/modification of the judgment dated 17.12.2002 (passed in **O.P.Swearnakar's** case (supra) (Annexure P7/1). The Hon'ble Supreme Court was pleased to observe as under:-

"I.A.Nos.1-22.

These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS Scheme floated by the State Bank of Patiala is in para materia with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema,J.) was a member considered the same question in Civil Appeal No.2341 of 2003 arising out of Special Leave Petition No.23530 of 2002 entitled State Bank of Patiala vs. Jagga Singh disposed of on 13.3.2003 where this Court after considering clause 8 of the scheme floated by the State Bank of Patiala and clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No.2 allowing the appeals filed by the State Bank of India would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of

Patiala are allowed in terms of our judgment dated 17.12.2002."

By this judgment, the Hon'ble Supreme Court placed the respondent-Bank i.e. State Bank of Patiala at par with the State Bank of India. Accordingly, the appeal which was filed by the respondent-Bank against the judgment of this Court in the petitioner's case stood allowed vide order dated 21.1.2004 passed in I.A.1-22 of 2003 in Civil Appeal Nos.,7314-7335 of 2002 (State Bank of Patiala Versus Varinder Kumar Sharma and others). From this judgment, therefore, it becomes apparently clear that even if the petitioner had withdrawn on 2.3.2001 his application dated 1.3.2001, submitted for seeking voluntary retirement under the SBPVR Scheme and even if he had not accepted any benefit under the said scheme,still he was not entitled to withdraw his application after 1.3.2001. He was entitled to submit application seeking voluntary retirement under the SBPVR Scheme from 15.2.2001 to 1.3.2001 and he was entitled to withdraw the said application between the same period. Since he had not withdrawn the application seeking voluntary retirement on or before 1.3.2001, therefore, he was not entitled to do so after 1.3.2001 i.e. on 2.3.2001.

The learned counsel for the petitioner made reference to another judgment of the Hon'ble Supreme Court reported as **State Bank of Patiala Versus Romesh Chander Kanoji and others,** 2004(2) Recent Services Judgments 252 in which the same question came up for decision before the Hon'ble Supreme Court. The facts of that case were para materia with the facts of this case as is clear from para No.4 of the said judgment

which is reproduced as under:-

> "4. To complete the chronology of events, respondents herein applied under the SBPVRS between 15th February,2001 and Ist March,2001. Respondent No.1 withdrew his application for voluntary retirement on 3/5th March,2001. Similarly, respondent No.2 withdrew his application for voluntary retirement on 2nd March,2001. Respondent No.3 withdrew his application for voluntary retirement on 5th March, 2001. However, on 3rd April, 2001, the bank refused permission to the said respondents to withdraw from the scheme since their withdrawal was made after the date of the closure of the scheme on Ist March,2001. The decision of the bank not to allow the respondents to withdraw from the scheme came to be challenged by way of Writ Petition before the High Court along with several other writ petitions involving the same question. By common judgment dated 3rd April, 2002, the High Court allowed the writ petitions by quashing the SBPVRS itself. The High Court held that even if it is assumed for the sake of argument that the scheme was validly framed,it would still be open to an employee to withdraw his option before the same came to be accepted and effectively enforced. Being aggrieved, the Bank has come by way of appeal to this Court."

The Hon'ble Supreme Court was further pleased to observe as under:-

> "The decision of this Court in Bank of India vs. O.P.Swarnakar

(supra) is dated 17th December,2002. The decision was given by a three-Judge Bench of this Court. A similar question came before the Division Bench of this Court once again in the case of State Bank of Patiala vs. Jagga Singh by way of Civil Appeal No.2341 of 2003. It was held by the Division Bench that State Bank of Patiala was a subsidiary of State Bank of India; that clause 8 of SBPVRS was similar to clause 7of SBIVRS;that clause 8 of SBPVRS also gave opportunity to the employee to withdraw and consequently the appeal filed by State Bank of Patiala was allowed in terms of the decision in the case of Bank of India vs. O.P.Swarnakar (supra). The decision in the case of the Bank of India vs. O.P.Swarnakar has since been followed in several cases."

The question raised in **Ramesh Chander Kanoji's** case (supra) has been discussed in para No.8 of the said judgment by the Hon'ble Supreme Court which reads as under:-

"In the present matter, the question is once again sought to be re-agitated. Mr. Ahmadi, learned counsel appearing on behalf of the respondents herein contended that clause 9(i) of SBPVRS, quoted above, was similar to clause 10.5 of the scheme of other nationalized banks inasmuch as it provided that application once made cannot be withdrawn. It was submitted that clause 9(i) of said SBPVRS has not been noticed by the Division Bench of this Court in its judgment in the case of State Bank of Patiala vs. Jagga Singh (supra). It was

contended that clause 9(i) of the SBPVRS was dissimilar to SBIVRS,which gave opportunity to the employee to withdraw and consequently the judgment of the Division Bench of this Court in State Bank of Patiala vs. Jagga Singh (supra) needs reconsideration."

This question was answered by the Hon'ble Supreme Court in para No.9 as under:-

"We do not find any merit in the above argument. It is important to bear in mind that schemes in question are basically funded schemes. Under such schemes, time is given to every employee to opt for voluntary retirement and similarly time is given to the management to work out the scheme. Clause (5) of the SBPRVS gave 15 days time to the employees to opt for the scheme and under clause (8) a period of two months is given to the management to work out the scheme. Since the said schemes are funded schemes, the management is required to create a fund. The creation of the fund would depend upon number of applications; the cost of the scheme;liability which the scheme would impose on the bank and such other variable factors. If the employees are allowed to withdraw from the scheme at any time after their closure, it would not be possible to work out the scheme as all calculations of the management would fail. In the case of Bank of India vs. O.P.Swarnakar (supra) the SBIVRS is held to be an invitation to offer. Following the said judgment,we hold that SBPVRS is an

invitation to offer and not an offer. Clause 5 of the said SBPVRS inter alia states that the scheme will remain open during the period 15.2.2001 to 1.3.2001 whereas rule 8 thereof provides for mode of acceptance by the management. It is in the light of rules 5 and 8 that one has to read clause 9(i) which provides for general conditions and under which it is provided that application once made cannot be withdrawn. In Chitty on Contracts (28th Ed.Page 125), the learned author states that " an offer may be withdrawn at any time before it is accepted. That this rule applies even when the offer or has promised to keep the offer open for a specified time,for such a promise is unsupported by consideration." Therefore, clause 5 of SBPVRS gives locus poenitentiae to the employee to withdraw by 1.3.01 after which the mode of acceptance contemplated by clause 8 of the SBPVRS would apply and the bank will proceed to vet the applications. As stated above,the bank needs time to ascertain its liability, it is required to find out the cost of creation of a separate fund which in turn depends on the number of applications and if the employees are permitted to withdraw after the date of closure it would be impossible for the bank to implement the scheme. Therefore, clause 5 gives time to the employee to withdraw by Ist March 2001 and the bank is given time of two months thereafter to complete the designated mode of acceptance (See Halsbury's Laws of England,4th Edition page 133). Reading clauses 5,8 and 9(i), it

is clear that employees are precluded from withdrawing from the SBPVRS after the closure of the scheme on 1.3.2001."

The Hon'ble Supreme Court was clearly pleased to hold that the SBPVR Scheme applied by the respondent-Bank is para materia with the voluntary retirement scheme initiated by the State Bank of India and since the employees of the respondent-Bank were given options to withdraw the applications between 15.2.2001 to 1.3.2001, therefore, the employees of the respondent-Bank had no right to withdraw the application for seeking voluntary retirement after 1.3.2001. The petitioner having applied for voluntary retirement on 1.3.2001 had no right to withdraw the application after 1.3.2001 i.e. on 2.3.2001.

The learned counsel for the petitioner made reference to the Hon'ble Division Bench judgment of this Court dated 6.9.2005 passed in Civil Writ Petition No.1598 of 2005 **Gurcharan Singh Versus F.C.I. and others,** in which Food Corporation of India was the respondent and it was submitted that the Hon'ble Division Bench of this Court was pleased to hold that an employee was entitled to withdraw the application seeking voluntary retirement before it was accepted and since, in the present case, the petitioner had withdrawn his application seeking voluntary retirement prior to its acceptance, therefore, the respondent-Bank had no right to accept the same on 26.2.2004 when it was withdrawn by the petitioner on 2.3.2001.

This submission has been considered. This judgment does not apply to the facts of the present case. It was admitted by the learned counsel for the petitioner that the judgment of the Hon'ble Supreme Court in **Ramesh Chander Kanoji's** case has not been discussed (in Gurcharan

Singh's case (supra) relied upon by the learned counsel for the petitioner) which clearly relates to the employees of the State Bank of Patiala i.e. respondent-Bank. Even the order of the Hon'ble Supreme Court dated 21.1.2004 passed in I.A.1-22 of 2003 in Civil Appeal Nos.,7314,7335 of 2002 has not been discussed in Gurcharan Singh's case (supra). The Hon'ble Supreme Court in the order dated 21.1.2004 (Annexure P7/1) has specifically dealt with the case of the petitioner and in **Ramesh Chander Kanoji's** case, same question of law has been discussed which is involved in the present petition. Therefore, the judgment of the Hon'ble Division Bench, relied upon by the learned counsel for the petitioner does not apply to the facts of the present case.

In view of the law discussed above, it is held that the petitioner could withdraw the application seeking voluntary retirement between 15.2.2001 to 1.3.2001. He was precluded from withdrawing from SBPVR Scheme after the closure of the scheme on 1.3.2001 as held by the Hon'ble Supreme Court. Therefore, the respondent Bank was entitled to accept the application filed by the petitioner on 1.3.2001 under the SBPVR Scheme at any time thereafter. The impugned order dated 26.2.2004 does not suffer from any illegality.

There is no merit in this petition and the same is dismissed.

January 24,2007. (S. N. Aggarwal)
Jaggi Judge